Supreme Court, U.S.
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No. 90-1217

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1990

Shirley M. Kearing,
Petitioner,

v.

The Honorable S. Martin Teel, Jr., et al,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
For the District of Columbia

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' OPPOSITION

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How exhilarating to petitioner that the federal respondents admit a conflict exists between the Circuit Courts of Appeals concerning contempt powers of bankruptcy judges.

Petitioner does not concur, however, that

> ... the issue is not presented for resolution in this case because the federal respondents are in any event entitled to dismissal of the action against them.-[1]

Petitioner posits that it is precisely the resolution of whether or not a bankruptcy judge has contempt powers that must be determined by this Court.

But Respondents would have the Court ignore this monumental question by diverting its attention to "immunity" and "failure to state a claim."

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[1] Brief for the Federal Respondents in Opposition, Argument, -1, p.7.

Here, the federal respondents have grossly misconstrued postulate for premise. In their attempt to use the principle governing reliable inference these respondents have done no more in their brief -- from the first sentence in the Statement to the last sentence in the Argument -- than "beg the question."

Using the same faulty reasoning as the district court, the federal respondents have picked out, to liberally lift two limpid terms from the writings of a noted jurist, their "darling" in the "nursery" from the Federal Rules of Civil Procedure as their first line of defense -- Rule 12(b)(6).

These respondents should not be coddled by Rule 12(b)(6) since petitioner rebuffs that puisne "brat" by invoking her pro se protection found in Haines v. Kerner,

404 U. S. 519, 92 S.Ct. 594, 30 L.Ed2d 652 (1972), thereby stating that her allegations,

> ... however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence.

Petitioner agrees with the federal respondents' use of Stump v. Sparkman, 435 U.S. 349, and this Court's explanation and example at p. 356-7 along with citing from Bradley, 13 Wall., at 352. Petitioner has no quarrel with judicial immunity, per se; but does "bankruptcy judge" mean a "judge" as this Court has so determined?

Semantics nothwithstanding, 28 U.S.C. 151 provides that

> [i]n each judicial district the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district.

And, too,

> [e]ach bankruptcy judge, [is] ... a judicial officer of the district court ....

The last sentence in 28 U.S.C. 152(a)(1) strengthens this subservience:

> Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

Buttressed by the "Omega ruling"[2] in the District of Columbia and the 5th and 9th Circuits' opinions[3], petitioner maintains this Article I "judge" has wandered into pastures exclusively reserved for Article III adjudication and that this Article I "judge" is not "absolutely immune" when he was alerted by petitioner of a "clear absence of ALL jurisdiction" for contempt sanctions by him. And, too, by having his employee, the clerk of the bankruptcy court -- who, incidentally, serves at the

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[2] In re Omega Equip. Corp., 51 Bankr. 569 (D.D.C. 1985).

[3] In re Sequoia Auto Brokers, Ltd., 827 F.2d 665 (4th Cir. 1989) and In re Hipp, Inc., 895 F.2d 1503 (5th Cir. 1990).

bankruptcy judge's leisure and is under his direct control and supervision -- present the United States Marshals with that infernal contempt order, there can not be the extension of "absolute immunity" granted to him either. And for that matter, there should be no immunity for any of the other respondents in petitioner's complaint.

Federal respondents also assert petitioner cannot state Respondeat Superior claim. Petitioner refers federal respondents to Haynesworth v. Miller, 820 F.2d 1245 (DC Cir. 1987), at 1262 [13]:

> [...I]n order to find a supervisory official personally liable in damages for the unconstitutional acts of his subordinate, it must be shown that he was responsible for supervising the wrongdoer; that a duty to instruct the subordinate to prevent constitutional harm arose from the surrounding circumstances; and that, as a result of the officials failure to instruct, the petitioner was harmed in the manner threatened.

And then, in footnote 139, page 1263, supra:

> ... reasonable inferences ... [are] not circumscribed by this court's admonition in Hobson v. Wilson, [737 F.2d 1 (DC Cir. 1984), cert. denied, 470 U.S. 1084, 105 S.Ct. 1843, 85 L.Ed.2d 142 (1985)], that allegations of unconstitutional motive be pleaded with some specificity. The claim ... is not founded upon any malicious intent ... but upon ... acquiescence in the wrongful acts of others. Since the underlying constitutional violation --including the motive element -- has been set forth with sufficient particularity, we are at liberty to draw reasonable inferences with regard to ... implication therein.

Federal respondents contend that petitioner fails to state a Bivens claim. Again, federal respondents either have not read or they have completely misread what Bivens decided; viz., as applicable to this particular complaint petitioner's allegations against federal respondents, as individuals named in the above-captioned complaint and ACTING in an official capacity, stated her due process rights had

been violated and that comports exactly with Bivens.

And, if the federal respondents find the original complaint somewhat vague then the blame must lie somewhere in Haines, supra, p. 520, wherein "the allegations of the pro se complaint" must be held "to less stringent standards than the formal pleadings drafted by lawyers."

Federal respondents also state that petitioner failed to meet the "heightened pleading standard." This argument may or may not be valid[4]; regardless, petitioner has no trepidation expressing violation of due process under the Fifth Amendment of the Constitution of the United States which lead to her illegal arrest and incarceration. Petitioner is alleging a

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[4] Siegert v. Gilley, cert. granted, 111 S. Ct. 292 (1990) (argued Feb. 19, 1991).

"specific deprivation of rights" that are "clearly established."

Petitioner would also, in this response, bring to this Court's attention that the federal respondents rely on the sequence of events in the bankruptcy proceeding as spun by other respondents which is tenuous at best. Inaccuracies abound. Sloth rather than sleuth, no doubt, hampered the federal respondents' diligent study of petitioner's bankruptcy file (even though voluminous) to discover the precarious position they now find themselves.

For example, there was but one supposed creditor -- now known to petitioner not as a secured creditor but an unidentified and unrecognized agent for a secured creditor -- who, barren of any standing in the bankruptcy court, requested a trustee without presenting any evidence whatsoever at a noticed hearing. Both requisites,

evidence and hearing, are required by the Bankruptcy Code before appointment of a trustee.[5]

And, too, the federal respondents failed to explain to this Court that a request for an examiner[6] to investigate the shenanigans going on in the bankruptcy proceeding was made by petitioner prior to any request for a trustee and the bankruptcy court totally ignored (and has continued to ignore) this request while the United States Trustee, inter alia, twiddled.

All the respondents have become entangled in their own webs of deceit -- not only undermining the protections afforded the petitioner by the United States Constitution but usurping the laws that champion those rights thereunder.

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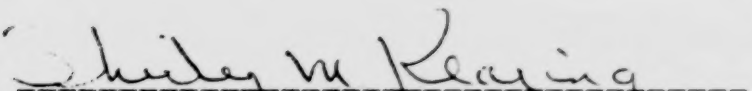
[5] 11 U.S.C. 1104(a).

[6] 11 U.S.C. 1104(b).

> No social or moral order can sustain itself, much less flourish, unless it can affirm, reinforce, and reify the fundamental values that define it. By placing the moral and coercive powers of the state behind those norms, tort adjudication performs these central ritualistic, symbolic functions. When the law immunizes official violations of substantive or procedural rules, leaving their victims without remedy, the integrity and universality of those rules and their underlying public values are called into serious question.[7]

Accordingly, petitioner should be "entitled to an opportunity to offer proof" and prays this Court grant her petition for certiorari.

Respectively submitted,



SHIRLEY M. KEARING, Pro Se
For the Petitioner

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[7] P. Schuck, Suing Government - Citizen Remedies for Official Wrongs (1983).

AFFIDAVIT OF SERVICE

I, Shirley M. Kearing, depose and say that I am the petitioner in the foregoing case, and that on April 10, 1991, pursuant to Rule 28.5(c), Rules of the United States Supreme Court, I personally served three (3) copies of the foregoing "Petitioner's Reply to Federal Respondents' Opposition," consisting of 10 pages, on each of the parties required to be served as follows:

Honorable Kenneth W. Starr
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All parties required to be served have been served.

Shirley M. Kearing

SHIRLEY M. KEARING, Pro Se
For the Petitioner

Subscribed and sworn to before me on the 16 day of April, 1991.

Notary Public, D. C.

My commission expires:

Dec 14, 1992